IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

JACOB MCKINNEY, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. ALDOUS & ASSOCIATES, PLLC, and 731 WATER STREET, LLC, d/b/a GOLD'S GYM MILWAUKEE, Defendants.	Case No. 16-CV-539

ANSWER AND AFFIRMATIVE DEFENSES

NOW COMES the Defendant, 731 Water Street, LLC, d/b/a Gold's Gym Milwaukee ("**Golds**") by and through its attorneys, Sitzmann Law Firm Ltd., who allege and state to the Court as follows:

1. Lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 1, therefore **deny**, putting Plaintiff to its strict proofs therein.

2. Paragraph 2 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 2, therefore **deny**, putting Plaintiff to its strict proofs therein.

3. Lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 3, therefore **deny**, putting Plaintiff to its strict proofs therein.

4. Paragraph 4 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 4, therefore **deny**, putting Plaintiff to its strict proofs therein.

5. Paragraph 5 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 5, therefore **deny**, putting Plaintiff to its strict proofs therein.

6. Lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 6, therefore **deny**, putting Plaintiff to its strict proofs therein.

7. Lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 7, therefore **deny**, putting Plaintiff to its strict proofs therein.

8. Paragraph 8 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 8, therefore **deny**, putting Plaintiff to its strict proofs therein.

9. Admit the allegations of paragraph 9.

10. Deny the allegations of paragraph 10.

11. Paragraph 11 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 11, therefore **deny**, putting Plaintiff to its strict proofs therein.

12. The second sentence of Paragraph 12 states a legal conclusion and therefore does not require an answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 12, therefore **deny**, putting Plaintiff to its strict proofs therein.

13. Deny the allegations of Paragraph 13. On or about August 28, 2015, Plaintiff signed a Membership Agreement with Golds that is attached to the Complaint as Exhibit B.

14. Paragraph 14 is unclear as to what Debit Card Number is being referred to and whether Plaintiff agreed that Golds would Debit Plaintiffs Account monthly, and therefore Golds lacks information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 14, therefore **deny**, putting Plaintiff to its strict proofs therein.

15. Paragraph 15 lacks information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 15, therefore **deny**, putting Plaintiff to its strict proofs therein.

16. Deny the allegations of Paragraph 16.

17. Deny the allegations of Paragraph 17.

18. Deny the allegations of Paragraph 18.

19. Paragraph 19 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 19, therefore **deny**, putting Plaintiff to its strict proofs therein.

20. Lack information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph no. 20, other than Exhibit A attached to the Complaint, therefore **deny**, putting Plaintiff to its strict proofs therein.

21. Lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 21, therefore **deny**, putting Plaintiff to its strict proofs therein.

22. As to the allegations of paragraph 22 of the Complaint, Admit that Exhibit A attached to the Complaint speaks for itself.

23. Paragraph 23 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 23, therefore **deny**, putting Plaintiff to its strict proofs therein.

24. Paragraph 24 states legal conclusions and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 24, therefore **deny**, putting Plaintiff to its strict proofs therein.

25. Paragraph 25 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 25, therefore **deny**, putting Plaintiff to its strict proofs therein.

26. Paragraph 26 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 26, therefore **deny**, putting Plaintiff to its strict proofs therein.

27. Golds admits that Exhibit B attached to the Complaint speaks for itself, otherwise Paragraph 27 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 27, therefore **deny**, putting Plaintiff to its strict proofs therein.

28. Paragraph 28 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 28, therefore **deny**, putting Plaintiff to its strict proofs therein.

29. The first sentence in paragraph 29 is not a Pleading which requires an Answer. Golds admits that Exhibit B attached to the Complaint speaks for itself, otherwise the allegations of the second sentence of Paragraph 29 are denied.

30. Paragraph 30 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 30, other than Exhibit B attached to the Complaint speaks for itself; therefore **deny**, putting Plaintiff to its strict proofs therein.

31. Paragraph 31 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 31, therefore **deny**, putting Plaintiff to its strict proofs therein.

32. Paragraph 32 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 32, therefore **deny**, putting Plaintiff to its strict proofs therein.

33. Paragraph 33 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 33, therefore **deny**, putting Plaintiff to its strict proofs therein.

34. Paragraph 34 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 34, therefore **deny**, putting Plaintiff to its strict proofs therein.

35. Paragraph 35 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 35, therefore **deny**, putting Plaintiff to its strict proofs therein.

36. Paragraph 36 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 36, therefore **deny**, putting Plaintiff to its strict proofs therein.

37. Exhibit A attached to the Complaint speaks for itself as to the allegations of Paragraph 37.

38. Exhibit A attached to the Complaint speaks for itself as to the allegations of Paragraph 38.

39. Paragraph 39 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 39, therefore **deny**, putting Plaintiff to its strict proofs therein.

40. Paragraph 40 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 40, therefore **deny**, putting Plaintiff to its strict proofs therein.

41. Lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 41, therefore **deny**, putting Plaintiff to its strict proofs therein.

42. Paragraph 42 is not a Pleading that requires an Answer as it purports to recite a Courts Statement. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 42, therefore **deny**, putting Plaintiff to its strict proofs therein.

43. Paragraph 43 is not a Pleading that requires an Answer and states a legal conclusion and therefore does not require an answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 43, therefore **deny**, putting Plaintiff to its strict proofs therein.

44. Paragraph 44 is not a Pleading that requires an Answer and states a legal conclusion and therefore does not require an answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 44, therefore **deny**, putting Plaintiff to its strict proofs therein.

45. Lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 45, therefore **deny**, putting Plaintiff to its strict proofs therein.

46. Lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 46, therefore **deny**, putting Plaintiff to its strict proofs therein.

47. Lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 47, therefore **deny**, putting Plaintiff to its strict proofs therein.

48. Lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 48, therefore **deny**, putting Plaintiff to its strict proofs therein.

49. Lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 49, therefore **deny**, putting Plaintiff to its strict proofs therein.

50. Lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 50, therefore **deny**, putting Plaintiff to its strict proofs therein.

51. Paragraph 51 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 51, therefore **deny**, putting Plaintiff to its strict proofs therein.

52. Paragraph 52 states a legal conclusion and therefore does not require an Answer from Golds.

53. Paragraph 53 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 53, therefore **deny**, putting Plaintiff to its strict proofs therein.

54. Paragraph 54 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 54, therefore **deny**, putting Plaintiff to its strict proofs therein.

55. Paragraph 55 states a legal conclusion and therefore does not require an Answer from Golds.

56. Deny the allegations of Paragraph 56.

57. Deny the allegations of Paragraph 57.

58. Deny the allegations of Paragraph 58.

59. Lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 59, therefore **deny**, putting Plaintiff to its strict proofs therein.

60. Paragraph 60 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 60, therefore **deny**, putting Plaintiff to its strict proofs therein.

61. Paragraph 61 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 61, therefore **deny**, putting Plaintiff to its strict proofs therein.

62. Lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 62, therefore **deny**, putting Plaintiff to its strict proofs therein.

63. Paragraph 63 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 63, therefore **deny**, putting Plaintiff to its strict proofs therein.

64. Lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 64, therefore **deny**, putting Plaintiff to its strict proofs therein.

65. Paragraph 65 states a legal conclusion and therefore does not require an Answer from Golds.

66. Paragraph 66 states a legal conclusion and therefore does not require an Answer from Golds.

67. Paragraph 67 states a legal conclusion and therefore does not require an Answer from Golds.

68. Paragraph 68 states a legal conclusion and therefore does not require an Answer from Golds.

69. Paragraph 69 states a legal conclusion and therefore does not require an Answer from Golds.

70. Paragraph 70 states a legal conclusion and therefore does not require an Answer from Golds.

71. Paragraph 71 states a legal conclusion and therefore does not require an Answer from Golds.

72. Paragraph 72 states a legal conclusion and therefore does not require an Answer from Golds.

73. Paragraph 73 states a legal conclusion and therefore does not require an Answer from Golds.

74. Golds incorporates its Answers to Paragraphs 1 – 73 as to the allegations of Paragraph 74.

75. Golds is not required to file an Answer to Paragraph 75 as it relates to another Defendant; however, if an Answer is required, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 75, therefore **deny**, putting Plaintiff to its strict proofs therein.

76. Golds is not required to file an Answer to Paragraph 76 as it relates to another Defendant; however, if an Answer is required, Paragraph 76 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 76, therefore **deny**, putting Plaintiff to its strict proofs therein.

77. Golds is not required to file an Answer to Paragraph 77 as it relates to another Defendant; however, if an Answer is required, Paragraph 77 states a legal conclusion and therefore does not require an answer from Golds.

78. Golds is not required to file an Answer to Paragraph 78 as it relates to another Defendant; however, if an Answer is required, Paragraph 78 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 78, therefore **deny**, putting Plaintiff to its strict proofs therein.

79. Golds is not required to file an Answer to Paragraph 79 as it relates to another Defendant; however, if an Answer is required, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 79, therefore **deny**, putting Plaintiff to its strict proofs therein.

80. Golds is not required to file an Answer to Paragraph 80 as it relates to another Defendant; however, if an Answer is required, Paragraph 80 states a legal conclusion and therefore does not require an answer from Golds.

81. Golds incorporates its Answers to Paragraphs 1 – 80 as to the allegations of Paragraph 81.

82. Golds is not required to file an answer to Paragraph 82 as it relates to another Defendant; however, if an Answer is required, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 82, therefore **deny**, putting Plaintiff to its strict proofs therein.

83. Golds is not required to file an answer to Paragraph 83 as it relates to another Defendant; however, if an Answer is required, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 83, therefore **deny**, putting Plaintiff to its strict proofs therein.

84. Golds is not required to file an Answer to Paragraph 84; however, if an Answer is required, deny.

85. Golds is not required to file an Answer to Paragraph 84; however, if an Answer is required, states a legal conclusion and therefore does not require an answer.

86. Golds incorporates its Answers to Paragraphs 1 – 85 as to the allegations of Paragraph 86.

87. Golds is not required to file an Answer to Paragraph 87 as it relates to another Defendant; however, if an Answer is required, states a legal conclusion and therefore does not require an answer.

88. Golds is not required to file an Answer to Paragraph 88 as it relates to another Defendant; however, if an Answer is required, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph no. 88, therefore **deny**, putting Plaintiff to its strict proofs therein.

89. Golds is not required to file an Answer to Paragraph 89 as it relates to another Defendant; however, if an Answer is required, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph no. 89, therefore **deny**, putting Plaintiff to its strict proofs therein.

90. Golds is not required to file an Answer to Paragraph 90 as it relates to another Defendant; however, if an Answer is required, Paragraph 90 states a legal conclusion and therefore does not require an Answer from Golds.

91. Golds incorporates its Answers to Paragraphs 1 – 90 as to the allegations of Paragraph 91.

92. Paragraph 92 is not a Pleading that requires an Answer; however, if an answer is required, deny the allegations to Paragraph 92.

93. Paragraph 93 lacks information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 93, therefore **deny**, putting Plaintiff to its strict proofs therein.

94. Paragraph 94 states a legal conclusion and therefore does not require an answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 94, therefore **deny**, putting Plaintiff to its strict proofs therein.

95. Golds incorporates its Answers to Paragraphs 1 – 94 as to the allegations of Paragraph 95.

96. Paragraph 96 is not a Pleading that requires an Answer; however, if an Answer is required, deny.

97. Paragraph 97 states a legal conclusion and therefore does not require an answer from Golds; however, if an Answer is required, deny.

98. Paragraph 98 states a legal conclusion and therefore does not require an Answer from Golds; however, if an Answer is required, deny.

99. Lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 99, therefore **deny**, putting Plaintiff to its strict proofs therein.

100. Paragraph 100 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 100, therefore **deny**, putting Plaintiff to its strict proofs therein.

101. Paragraph 101 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no.101, therefore **deny**, putting Plaintiff to its strict proofs therein.

102. Paragraph 102 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 102, therefore **deny**, putting Plaintiff to its strict proofs therein.

103. Paragraph 103 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 103, therefore **deny**, putting Plaintiff to its strict proofs therein.

104. Paragraph 104 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 104, therefore **deny**, putting Plaintiff to its strict proofs therein.

105. Paragraph 105 states a legal conclusion and therefore does not require an Answer from Golds. Alternatively, lack information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph no. 105, therefore **deny**, putting Plaintiff to its strict proofs therein.

106. Golds is not required to file an Answer to Paragraph 106; however, if an Answer is required, Paragraph 106 states a legal conclusion and therefore does not require an Answer from Golds.

AFFIRMATIVE DEFENSES

1. Plaintiff never exercised his contractual right to cancel and therefore there is no violation of Wis. Stat. 170.177 (9).

2. Plaintiff did not make payment or call back as promised to Golds and therefore Plaintiff failed to mitigate the damages, waived and is estopped from asserting his claims and fails to state a claim.

3. Plaintiff failed to provide Notice to Golds as required under Wis. Stat. § 426.110 (4).

WHEREFORE, Golds demands dismissal of this action with prejudice, together with costs, disbursements and attorneys fees.

Dated this 2nd day of August, 2016.

/s/ Christopher G. Sitzmann
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